

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF TEXAS
LUFKIN DIVISION

JERRY H. BROSEH, #438382	§	
VS.	§	CIVIL ACTION NO. 9:11cv131
		9:11cv132
DIRECTOR, TDCJ-CID	§	AND 9:11cv92

MEMORANDUM ADOPTING REPORT AND RECOMMENDATION
OF THE UNITED STATES MAGISTRATE JUDGE
AND ORDER OF CONSOLIDATION

Petitioner Jerry Broseh, an inmate currently confined in the Texas Department of Criminal Justice, Correctional Institutions Division proceeding *pro se*, filed these applications for the writ of habeas corpus complaining of the legality of his confinement. The petitions have been referred to the undersigned United States Magistrate Judge pursuant to 28 U.S.C. §636(b)(1) and (3) and the Amended Order for the Adoption of Local Rules for the Assignment of Duties to United States Magistrate Judges.

On August 25, 2011, the Court consolidated case no. 9:11cv132 into case no. 9:11cv131 because they appeared to be the same identical case, docketed twice in error. Then, on October 20, 2011, the Court issued an Order to Show Cause, directing Respondent to file a response to the petition within 60 days of the order. In the interim, on September 23, 2011, the Court separately consolidated case no. 9:11cv114 into case no. 9:11cv92 as involving the same disciplinary case. Each of these cases included a petition for writ of habeas corpus filed by Petitioner Broseh.

Then, in 9:11cv131, Petitioner filed a Motion to Issue a Show Cause Order in Civil Action No. 9:11cv92 (docket entry #10), which the Magistrate Judge construed as a motion to further

consolidate case no. 9:11cv131 into case no. 9:11cv92. All of these habeas actions challenge Petitioner's conviction of and punishment for certain prison disciplinary cases. Having examined the cases, the Magistrate Judge then issued a Report and Recommendation (docket entry #11) finding that 9:11cv92, as consolidated, involves disciplinary case number 20110079012 for refusing housing. She further found that case no. 9:11cv131 involves disciplinary case number 20110086920, for threatening an officer. However, the Magistrate Judge found, the two disciplinary cases were heard in the prison system in close proximity to each other and, as alleged by Petitioner, each arose out of the same transaction and were allegedly in retaliation for Petitioner's seeking to be transferred from the Wallace Pack Unit to "any other prison unit throughout Texas." Motion at 3. Based on these findings, the Magistrate Judge recommended that case number 9:11cv131 (as previously consolidated with 9:11cv132) be consolidated into 9:11cv92 (as previously consolidated with 9:11cv114). No party has filed an objection to this consolidation. The Director did file a Motion for Extension of Time to file his answer in 9:11cv131 (docket entry #12), but has not made any objection to consolidation.

The Court has conducted a careful *de novo* review of the pleadings in this cause, including the Report of the Magistrate Judge and the Petitioner's Motion to Issue a Show Cause Order in Civil Action No. 9:11cv92. Upon such review, the Court has concluded that the Report of the Magistrate Judge is correct. It is accordingly

ORDERED that the Report of the Magistrate Judge (docket no. 11) is **ADOPTED** as the opinion of the District Court. It is further

ORDERED that Petitioner's Motion to Issue a Show Cause Order, construed as a Motion to Consolidate Case No. 9:11cv131 Into Case No. 9:11cv92 (docket entry #10) is hereby

GRANTED and that the above-styled civil actions be and hereby are **CONSOLIDATED** for all purposes into one application for the writ of habeas corpus, styled as *Broseh v. Director, TDCJ-CID*, civil action no. 9:11cv92. See Rule 42(a), Fed. R. Civ. P. Any pleadings or documents received in either case shall be docketed in cause no. 9:11cv92; no further entries, after this order of consolidation, shall be made on the docket of cause no. 9:11cv131. It is further

ORDERED that inasmuch as case no. 9:11cv131 is wholly subsumed within case no. 9:11cv92, only one filing fee will be charged to Petitioner and that the filing fee of \$5.00 paid in case no. 9:11cv131 shall be refunded to him. This order of consolidation shall not affect the substantive rights of any party to this case. It is further

ORDERED that the Director's First Motion for Extension of Time filed in 9:11cv131 (docket entry #12) is hereby **DENIED** as **MOOT**. The Director shall consolidate any response to the petition in 9:11cv131 into his response to 9:11cv92 when that response is due; if the Director requires additional time in the consolidated case, he may request it there. It is finally

ORDERED that any other motions that may be pending in case no. 9:11cv131 are hereby **DENIED**, without prejudice to their re-urging, if necessary, in case no. 9:11cv92.

So **ORDERED** and **SIGNED** this **30** day of **December, 2011**.



Ron Clark, United States District Judge